

## **Board Administration and Regulatory Coordination Unit**

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### **Division 3. Air Resources Board**

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### **Chapter 1. Air Resources Board**

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### **Subchapter 1.25. Administrative Procedures--Hearings**

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### **Article 4. Administrative Hearing Procedures for Review of Citations**

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### **Subarticle 8. Contempt and Sanction Orders**

#### **§ 60075.29. Contempt.**

(a) If any person in proceedings before the hearing officer disobeys or resists any lawful order or refuses to respond to a subpoena, subpoena duces tecum, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct during a hearing or in its immediate vicinity as to obstruct the proceedings, the hearing officer may certify the facts to the Superior Court in and for the county where the proceedings are held for contempt proceedings pursuant to Government Code sections 11455.20, and 11186 through 11188.

(b) Notwithstanding the above, the hearing officer may order a party, a party's representative or both, to pay reasonable expenses, including authorized representation fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.

(1) "Actions or tactics" include, but are not limited to, the making or opposing of motions; the failure to comply with a discovery request or subpoena; or the failure to comply with a lawful order of the hearing officer.

(2) "Frivolous" means:

(A) Totally and completely without merit, or

(B) For the sole purpose of harassing an opposing party.

(c) An order for sanctions may be oral, on the record, or in writing and shall set forth the factual findings which are the basis for the imposition of sanctions.

(1) In determining reasonable expenses, the party or parties to whom payment is to be made shall, at the hearing officer's discretion, either make a statement on the record under oath or submit a written declaration under penalty of perjury setting forth with specificity the expenses incurred as a result of the other party's conduct.

(2) Within 5 days of the receipt of the hearing officer's order for the payment of expenses, a party or representative may, on grounds of hardship, request reconsideration from the hearing officer issuing the order. The request for reconsideration shall be filed in writing, and include a declaration under penalty of perjury.

(d) The order or denial of an order to pay expenses under paragraph (b) is subject of procedural review in the same manner as a final decision pursuant to Subarticle 12.

NOTE: Authority cited: Sections 39600, 39601, 43028, 43031(a) and 44011.6(m), Health and Safety Code. Reference: *Mathews v. Eldridge*, 424 U.S. 319 (1976); Sections 43028, 43031(a) and 44011.6, Health and Safety Code; and Section 11525, Government Code.

#### **REFERENCE**